MONTANA LEGISLATIVE HISTORY

Chapter 419 19 93

Bill H _____ S 89 Original bill & history ✓ C

H. Committee on Human Svcs & Aging

Hearing Date(s) Feb 08 ✓ C

Feb 10 ✓ C

_____ C

_____ C

Date Out _____ C

S. Committee on Public Health Welfare & Safety

Hearing Date(s) Jan 15 ✓ C

Jan 20 ✓ C

_____ C

_____ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

4/19	CONFERENCE COMMITTEE APPOINTED		
4/24	CONFERENCE COMMITTEE REPORT NO. 1		
4/24	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	39	8
4/24	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	40	9
	HOUSE		
4/21	CONFERENCE COMMITTEE APPOINTED		
4/23	CONFERENCE COMMITTEE REPORT NO. 1		
4/24	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	81	14
4/24	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	75	21
4/27	SIGNED BY PRESIDENT		
4/27	SIGNED BY SPEAKER		
4/27	TRANSMITTED TO GOVERNOR		
4/28	SIGNED BY GOVERNOR CHAPTER NUMBER 583 EFFECTIVE DATE: 04/28/93		

SB 88 INTRODUCED BY BECK, ET AL.

CLARIFY THAT THE STATE PRISON DAIRY MAY BE LICENSED

BY REQUEST OF DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

1/06	INTRODUCED		
1/06	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
1/06	FIRST READING		
1/11	HEARING		
1/11	COMMITTEE REPORT—BILL PASSED		
1/12	2ND READING PASSED	49	0
1/13	3RD READING PASSED	48	1
	TRANSMITTED TO HOUSE		
1/14	FIRST READING		
1/14	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
1/21	HEARING		
2/04	COMMITTEE REPORT—BILL CONCURRED		
2/06	2ND READING CONCURRED	96	0
2/09	3RD READING CONCURRED	100	0
	RETURNED TO SENATE		
2/12	SIGNED BY PRESIDENT		
2/14	SIGNED BY SPEAKER		
2/15	TRANSMITTED TO GOVERNOR		
2/19	SIGNED BY GOVERNOR CHAPTER NUMBER 56 EFFECTIVE DATE: 02/19/93		

SB 89 INTRODUCED BY JACOBSON

REVISE BOARD OF MEDICAL EXAM RULES AND PHYSICIAN ASSISTANT-CERTIFIED RULES

BY REQUEST OF DEPARTMENT OF COMMERCE

1/06	INTRODUCED
1/06	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY
1/06	FIRST READING
1/07	FISCAL NOTE REQUESTED
1/11	FISCAL NOTE RECEIVED
1/12	FISCAL NOTE PRINTED
1/15	HEARING
1/27	COMMITTEE REPORT—BILL PASSED AS AMENDED

1/28	2ND READING PASSED	45	0
1/29	3RD READING PASSED	47	0
	TRANSMITTED TO HOUSE		
1/30	FIRST READING		
1/30	REFERRED TO HUMAN SERVICES & AGING		
2/08	HEARING		
2/11	COMMITTEE REPORT—BILL CONCURRED		
3/02	2ND READING CONCURRED	88	9
3/05	3RD READING CONCURRED	95	4
	RETURNED TO SENATE		
3/10	SIGNED BY PRESIDENT		
3/10	SIGNED BY SPEAKER		
3/11	TRANSMITTED TO GOVERNOR		
3/17	RETURNED TO SENATE WITH GOVERNOR'S AMENDMENTS		
3/18	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	49	0
3/19	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	47	0
	TRANSMITTED TO HOUSE		
4/01	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	92	2
4/02	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	95	4
	RETURNED TO SENATE		
4/14	SIGNED BY PRESIDENT		
4/14	SIGNED BY SPEAKER		
4/15	TRANSMITTED TO GOVERNOR		
4/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 419		
	EFFECTIVE DATE: 04/20/93		

SB 90 INTRODUCED BY JACOBSON, ET AL.

CONSTITUTIONAL AMENDMENT TO PROTECT PUBLIC RETIREMENT FUNDS

1/06	INTRODUCED		
1/06	REFERRED TO STATE ADMINISTRATION		
1/06	FIRST READING		
1/15	HEARING		
1/16	COMMITTEE REPORT—BILL PASSED		
1/18	2ND READING PASSED	48	0
1/19	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
1/20	FIRST READING		
1/20	REFERRED TO STATE ADMINISTRATION		
1/26	HEARING		
1/30	COMMITTEE REPORT—BILL CONCURRED		
2/02	2ND READING CONCURRED	93	6
2/04	3RD READING CONCURRED	95	3
	RETURNED TO SENATE		
2/10	SIGNED BY PRESIDENT		
2/11	SIGNED BY SPEAKER		
	(THIS BILL IS A PROPOSED CONSTITUTIONAL AMENDMENT AND DOES NOT REQUIRE GOVERNOR'S SIGNATURE)		
	CHAPTER NUMBER 43		
	EFFECTIVE DATE: 02/11/93—SECTIONS 3 & 4		

SENATE BILL NO. 89

INTRODUCED BY JACOBSON
BY REQUEST OF THE DEPARTMENT OF COMMERCE

IN THE SENATE

JANUARY 6, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY.
	FIRST READING.
JANUARY 27, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 28, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
JANUARY 29, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 47; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 30, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING.
	FIRST READING.
FEBRUARY 11, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 2, 1993	SECOND READING, CONCURRED IN.
MARCH 5, 1993	THIRD READING, CONCURRED IN. AYES, 95; NOES, 4.
MARCH 6, 1993	RETURNED TO SENATE.

IN THE SENATE

MARCH 8, 1993	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.
MARCH 10, 1993	SIGNED BY PRESIDENT.

	SIGNED BY SPEAKER.
MARCH 11, 1993	DELIVERED TO GOVERNOR.
MARCH 16, 1993	RETURNED FROM GOVERNOR WITH RECOMMENDED AMENDMENTS.
MARCH 18, 1993	SECOND READING, GOVERNOR'S AMENDMENTS CONCURRED IN.
MARCH 19, 1993	THIRD READING, GOVERNOR'S AMENDMENTS CONCURRED IN.
	IN THE HOUSE
APRIL 1, 1993	SECOND READING, GOVERNOR'S AMENDMENTS CONCURRED IN.
APRIL 2, 1993	THIRD READING, GOVERNOR'S AMENDMENTS CONCURRED IN.
	IN THE SENATE
APRIL 5, 1993	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

Senate BILL NO. 89

INTRODUCED BY T. Jacobson

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS ADMINISTERING THE MONTANA STATE BOARD OF MEDICAL EXAMINERS; ADDING A LICENSED PHYSICIAN ASSISTANT-CERTIFIED MEMBER TO THE BOARD; ALLOWING THE IMPAIRED PROFESSIONALS PROGRAM TO ADDRESS THE NEEDS OF PHYSICIANS DERIVING FROM MENTAL OR CHRONIC PHYSICAL ILLNESS; MAKING THE REQUIREMENT FOR PERSONAL APPEARANCE BY A PHYSICIAN APPLICANT FOR LICENSURE DISCRETIONARY; AMENDING THE DEFINITION OF "UNPROFESSIONAL CONDUCT"; AMENDING THE OBLIGATION TO REPORT INCOMPETENCE OR UNPROFESSIONAL CONDUCT; REVOKING THE LIABILITY INSURANCE REQUIREMENT FOR PHYSICIAN ASSISTANTS-CERTIFIED WHO WORK IN HOSPITALS; AMENDING PHYSICIAN ASSISTANTS-CERTIFIED PRACTICE STATUTES TO IMPROVE CLARITY AND ORGANIZATION; PROHIBITING PRACTICE AS A PHYSICIAN ASSISTANT-CERTIFIED PRIOR TO LICENSURE; REPLACING THE TERM "CERTIFICATE" WITH "LICENSE" WITH RESPECT TO PHYSICIAN ASSISTANTS-CERTIFIED; ALLOWING THE BOARD TO ISSUE CERTAIN FORMS OF LICENSURE TO PHYSICIAN ASSISTANTS-CERTIFIED; REVOKING THE REQUIREMENT THAT DRUGS DISPENSED BY A PHYSICIAN ASSISTANT-CERTIFIED BE PREPACKAGED BY A LICENSED PHARMACIST; ALLOWING CERTAIN PERSONS AND ENTITIES TO BILL FOR PHYSICIAN ASSISTANT-CERTIFIED SERVICES; AMENDING SECTIONS 2-15-1841, 37-3-203, 37-3-305, 37-3-322, 37-3-323, 37-3-401, 37-20-104, 37-20-202, 37-20-301, 37-20-302, 37-20-402, 37-20-404, AND 37-20-405, MCA; REPEALING SECTION 37-20-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-1841, MCA, is amended to read:

"**2-15-1841. Board of medical examiners.** (1) There is a Montana state board of medical examiners.

(2) The board consists of ~~10~~ 11 members appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.

(3) The members are:

(a) five members having the degree of doctor of medicine;

(b) one member having the degree of doctor of osteopathy;

(c) one member who is a licensed podiatrist;

(d) one member who is a licensed nutritionist; and

(e) one member who is a licensed physician assistant-certified; and

~~(e)~~(f) two members of the general public who are not

medical practitioners.

(4) The members having the degree of doctor of medicine may not be from the same county. Each member ~~shall~~ must be a citizen of the United States. Each member, except for public members, ~~shall~~ must have been licensed and ~~shall~~ must have practiced medicine or dietetics-nutrition in this state for at least 5 years and ~~shall~~ must have been a resident of this state for at least 5 years~~, except that for 5 years after October 1, 1987, the number of years of licensure required for the nutritionist member is no greater than the number of years this act has been in effect~~.

(5) The member who is a licensed nutritionist may vote only on issues that affect the licensure and regulation of nutritionists.

(6) The member who is a licensed physician assistant-certified may vote only on issues that affect the licensure and regulation of physician assistants-certified.

~~(6)~~(7) Members shall serve staggered 4-year terms. A term commences on September 1 of each year of appointment. A member may, upon notice and hearing, be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

~~(7)~~(8) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 37-3-203, MCA, is amended to read:

"**37-3-203. Powers and duties.** The board may:

(1) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter; the rules ~~shall~~ must be fair, impartial, and nondiscriminatory;

(2) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(3) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

(4) establish a program to assist and rehabilitate licensed physicians who are found to be physically or mentally impaired by habitual intemperance or the excessive use of ~~narcotic~~ addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness;

(5) select an executive secretary to be hired by the department to:

(a) provide services to the board in connection with the board's duties under this chapter;

(b) assist in prosecution and matters of license discipline under this chapter; and

(c) administer the board's affairs; and

(6) fund additional staff, hired by the department, to

administer the provisions of this chapter, by increasing license fees as necessary."

Section 3. Section 37-3-305, MCA, is amended to read:

"37-3-305. Qualifications for licensure. (1) No A person may not be granted a physician's ~~certificate~~ license to practice medicine in this state unless he the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training ~~which~~ that is at least the equivalent of 1 year internship;

(d) has had a completed application file reviewed by a board member and, in the discretion of the board member, has made a personal appearance before the board ~~unless such appearance has been specifically waived by the board~~; and

(e) is able to communicate, in the opinion of the board, in the English language.

(2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(3) No A person may not be granted a temporary license to practice medicine in this state unless he the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training ~~which~~ that is at least the equivalent of 1 year internship;

(d) has made a personal appearance before at least one member of the board; and

(e) is able, in the opinion of the board, to communicate in the English language."

Section 4. Section 37-3-322, MCA, is amended to read:

"37-3-322. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this chapter;

(2) performing abortion contrary to law;

(3) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(4) employing abusive billing practices;

(5) directly or indirectly giving or receiving a fee, commission, rebate, or other compensation for professional services not actually rendered. This prohibition does not preclude the legal functioning of lawful professional partnerships, corporations, or associations.

(6) willful disobedience of the rules or an order of the board;

(7) conviction of an offense involving moral turpitude or conviction of a felony involving moral turpitude, and the judgment of the conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(8) commission of an act of sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine;

(9) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(10) conviction or violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration, and the judgment of conviction, unless pending on appeal, is conclusive evidence

of unprofessional conduct;

(11) habitual intemperance or excessive use of ~~narcotic~~ addictive drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(12) conduct unbecoming a person licensed to practice medicine or detrimental to the best interests of the public as defined by rule of the board;

(13) conduct likely to deceive, defraud, or harm the public;

(14) making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment, or remedy prescribed by the licensee or at the licensee's direction in the treatment of a disease or other condition of the body or mind;

(15) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization;

(16) use of a false, fraudulent, or deceptive statement in any document connected with the practice of medicine;

(17) practicing medicine under a false or assumed name;

(18) testifying in court on a contingency basis;

(19) conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or

decrease a settlement, award, verdict, or judgment;

(20) aiding or abetting in the practice of medicine by a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(21) allowing another person or organization to use the licensee's license to practice medicine;

(22) malpractice or negligent practice;

(23) except as provided in this subsection, practicing medicine as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice medicine within this state; however, this does not prohibit:

(a) the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4;

(b) a single consultation with or a single treatment by a person ~~or--~~**persons** licensed to practice medicine and surgery in another state or territory of the United States or foreign country; or

(c) practicing medicine as the partner, agent, or employee of or in joint venture with a hospital, medical assistance facility, or other licensed health care provider. However:

(i) the partnership, agency, employment, or joint venture must be evidenced by a written agreement containing

language to the effect that the relationship created by the agreement may not affect the exercise of the physician's independent judgment in the practice of medicine;

(ii) the physician's independent judgment in the practice of medicine must in fact be unaffected by the relationship; and

(iii) the physician may not be required to refer any patient to a particular provider or supplier or take any other action the physician determines not to be in the patient's best interest.

(24) willfully or negligently violating the confidentiality between physician and patient, except as required by law;

(25) failing to report to the board any adverse judgment, settlement, or award arising from a medical liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(26) failing to transfer pertinent and necessary medical records to another physician when requested to do so by the subject patient or by the patient's legally designated representative;

(27) failing to furnish to the board or its investigators or representatives information legally requested by the board;

(28) failing to cooperate with a lawful investigation conducted by the board;

(29) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by them;

(30) having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined in this section. A certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct.

(31) any other act, whether specifically enumerated or not, ~~which~~ that, in fact, constitutes unprofessional conduct."

Section 5. Section 37-3-323, MCA, is amended to read:

"37-3-323. Revocation or suspension of license -- probation -- fine -- disposition of fine. (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person having a license or certificate to practice medicine in this state:

(a) is mentally or physically unable to safely engage

in the practice of medicine, has procured ~~his~~ a license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent, or has a condition ~~which~~ that impairs ~~his~~ the person's intellect or judgment to the extent that it incapacitates ~~him~~ the person for the safe performance of professional duties;

(b) has been guilty of unprofessional conduct;

(c) has practiced medicine ~~while-his-license-was~~ with a suspended or revoked license;

(d) has had ~~his~~ a license to practice medicine suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated its terms.

(2) The investigation ~~shall~~ must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part of the examination, and copies ~~of-these-shall~~ must be released to

the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the ~~person~~ person's ~~at his~~ last address of record with the department a specification of the charges ~~against him~~, together with a written notice of the time and place of the hearing on ~~such~~ the charges, advising ~~him~~ that ~~he~~ the person may be present ~~in person~~ and may be represented by counsel if ~~he so desires~~ the person wants to offer evidence and be heard in ~~his~~ the person's own defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.

(3) A person, including a member of the board, may file a written complaint with the department against a person having a license to practice medicine in this state charging ~~him~~ that person with the commission of any of the offenses set forth in 37-3-322 or with any of the offenses or conditions set forth in subsection (1) of this section~~,~~ ~~which complaint shall~~. The complaint must set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person accused at ~~his~~ the person's last address of record with the department, together with a written citation of the time and place of the hearing on it.

(4) At the hearing, the board shall adopt a resolution finding ~~him~~ the accused guilty or not guilty of the matters

charged. If the board finds that the offenses or conditions referred to in 37-3-322 or subsection (1) of this section do not exist with respect to the person or if ~~he~~ the person is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 37-3-322 or in subsection (1) of this section do exist and the person is found guilty, the board shall:

(a) revoke ~~his~~ the person's license;

(b) suspend ~~his~~ the person's right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on the terms and conditions to be determined by the board;

(d) place ~~him~~ the person on probation;

(e) impose a fine, not to exceed $500 an incident; or

(f) take any other action in relation to disciplining ~~him~~ the person as the board in its discretion considers proper.

(5) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent action of the board with respect to it.

(6) On the expiration of the term of suspension, the licensee ~~shall~~ must be reinstated by the board if ~~he~~ the suspended person furnishes the board with evidence that ~~he~~

the person is then of good moral character and conduct, ~~and~~ is restored to good health, and ~~that he~~ has not practiced medicine in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows ~~he~~ the person has practiced medicine in this state during the term of suspension, the board shall revoke the license, using the ~~at-a-hearing-with~~ notice and ~~the~~ hearing procedure provided in subsection ~~(1)~~ (2) ~~of-this-section~~. The revocation is final and absolute.

(7) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent or seriously mentally ill or addicted to the use of ~~narcotics~~ scheduled drugs, ~~his~~ the person's license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until ~~he~~ the person is discharged as restored to reason or cured and ~~his~~ the person's professional competence has been proven to the satisfaction of the board.

(8) A fine imposed under this section must be deposited in the general fund.

(9) The remedies and method of enforcement of this

part, as provided for in this section, are concurrent and in addition to the other remedies provided in this part."

Section 6. Section 37-3-401, MCA, is amended to read:

"37-3-401. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society ~~thereof~~ of the association shall and any other person may report to the ~~state~~ board ~~of-medical-examiners~~ any information ~~such~~ that the physician, organization, association, society, or person has ~~which~~ that appears to show that a physician is:

(a) medically incompetent;

(b) mentally or physically unable to safely engage in the practice of medicine; or

(c) guilty of unprofessional conduct.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the program established by the board under 37-3-203(4), in lieu of reporting directly to the board.

(b) The program personnel referred to in subsection

(2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

(i) the licensee fails or refuses to comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;

(ii) the licensee fails or refuses to undergo a reasonable course of treatment that they recommend, including reasonable aftercare;

(iii) the licensee fails or refuses to satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare;

(iv) the licensee's condition creates a risk of harm to the licensee, a patient, or others; or

(v) they are in possession of information that appears to show that the licensee has or is otherwise engaged in unprofessional conduct.

~~(2)~~(3) This section applies to professional standards review organizations only to the extent that ~~such~~ the organizations are not prohibited from disclosing ~~such~~ information under federal law."

Section 7. Section 37-20-104, MCA, is amended to read:

"37-20-104. ~~Penalty-----enforcement~~ Title and practice. (1) ~~Any~~ A person who employs a physician assistant-certified or holds ~~himself~~ out to be the public that the person is a

physician assistant-certified without the approval of the Montana state board of medical examiners is guilty of a misdemeanor and is punishable as provided in 46-18-212.

~~(2) In---addition---to--seeking--any--criminal--penalty available-under-this-section,-the-board-may,-in--the--manner set--out--in-subsection-(3)-and-after-notice-and-opportunity for--hearing,--discipline--any--supervising---physician---or physician-assistant-certified-who:~~

~~(a)--acts-in-violation-of-this-section;~~

~~(b)--obtained-the-approval-of-the-board-by-fraud;~~

~~(c)--acts--in--a--manner--contrary--to--the-terms-of-the utilization-plan;-or~~

~~(d)--violates-any-of-the-applicable-provisions--of--this chapter--or--rules-of-the-board-adopted-thereunder.~~ Prior to being issued a license and receiving approval of a utilization plan, a physician assistant-certified may not engage in the practice of medicine in this state, even under the supervision of a licensed physician.

~~(3)--If-the-board-finds-that-the--supervising--physician or---the--physician--assistant-certified--has--violated--any provision-of-subsection-(2),-the-board-may:~~

~~(a)--revoke-his-license-or-approval,-as-applicable;~~

~~(b)--suspend-his-right-to-practice-for-a-period--not--to exceed-1-year;~~

~~(c)--suspend--its--judgment--of--revocation-on-terms-and~~

~~conditions-determined-by-the-board;~~

~~(d)--place-him-on-probation;~~

~~(e)--impose--a--fine;--not--to--exceed--$500--for---each violation;-or~~

~~(f)--take-other-action-it-considers-proper;~~

~~(4)~~(3) The board may enforce the provisions of this section by the remedy of injunction."

NEW SECTION. **Section 8.** Disciplinary action. (1) The Montana state board of medical examiners may, after notice and opportunity for hearing, discipline a supervising physician or physician assistant-certified who:

(a) acts in violation of this section;

(b) obtains approval of the board by fraud;

(c) acts in a manner contrary to the terms of a utilization plan; or

(d) violates any of the applicable provisions of this chapter or rules of the board adopted under this chapter.

(2) If the board finds that the supervising physician or the physician assistant-certified has violated any provision specified in subsection (1), the board may:

(a) revoke the person's license or approval;

(b) suspend the person's right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on terms and conditions determined by the board;

(d) place the person on probation;

(e) impose a fine, not to exceed $500 for each violation; or

(f) take other action it considers proper.

Section 9. Section 37-20-202, MCA, is amended to read:

"**37-20-202. Adoption of rules.** The board of medical examiners shall adopt administrative rules to implement the provisions of this chapter that:

(1) address the issues of supervision and direction limitations and requirements;

(2) address the issue of protocols for interaction of medical personnel with differing responsibilities;

(3) specify that a physician may not utilize more than one physician assistant-certified unless ~~he---can~~ the physician is able to demonstrate to the board the ability to supervise more than one assistant adequately;

(4) address other considerations pertinent to the approval of physician assistant-certified utilization plans and locum tenens utilization plans, and the health care needs of the public;

(5) address physician assistant training in Montana; and

(6) set forth grounds for disciplinary action."

NEW SECTION. **Section 10.** Licensing of physician **assistants-certified.** The Montana state board of medical

examiners may issue the following two forms of physician assistants-certified licenses under its seal:

(1) a permanent license, signed by the president and subject to annual renewal; and

(2) a temporary license, signed by any member of the board and subject to specifications and limitations imposed by the board.

Section 11. Section 37-20-301, MCA, is amended to read:

"37-20-301. Utilization plan required -- contents -- approval. (1) A physician, office, firm, state institution, or professional service corporation may not employ or make use of the services of a physician assistant-certified in the practice of medicine, as defined in 37-3-102, and a physician assistant-certified may not be employed or practice as a physician assistant-certified unless the physician assistant-certified:

(a) is supervised by a licensed physician;

(b) ~~has--been-approved~~ is licensed by the Montana state board of medical examiners; and

(c) has received board approval of a physician assistant-certified utilization plan.

(2) A physician assistant-certified utilization plan must set forth in detail the following information:

(a) the name and qualifications of the supervising physician, as provided in 37-20-101, and the name and

~~approval~~ license number of the physician assistant-certified;

(b) the nature and location of the physician's medical practice;

(c) the ~~duties-to-be-delegated-to~~ scope of practice of the physician assistant-certified and the ~~location-in--which those--duties--are--to--be--performed~~ locations where the physician assistant-certified will practice;

(d) the name and qualifications of a second physician meeting the requirements of 37-20-101 to ~~serve-in-the--place of--the~~ act as an alternate supervising physician in the ~~event-that-the-supervising-physician-is-unable-to--supervise the-physician-assistant-certified-temporarily~~ absence of the primary supervising physician;

(e) necessary guidelines describing the intended availability of the supervising or alternate physician for consultation by the physician assistant-certified; and

(f) other information the board may consider necessary.

(3) The board shall approve the utilization plan if it finds that the ~~duties-to-be-delegated--to~~ practice of the physician assistant-certified ~~are~~ is:

(a) assigned by the supervising physician;

(b) within the scope of the training, knowledge, experience, and practice of the supervisory physician; and

(c) within the scope of the training, knowledge,

education, and experience of the physician assistant-certified.

(4) A supervising physician and a physician assistant-certified may submit a new or additional utilization plan to the board for approval without reestablishing the criteria set out in 37-20-402, as so long as the information requirements of subsection (2) have been met and the appropriate fee provided for in 37-20-302(1) has been paid.

(5) A utilization plan may provide that a physician assistant-certified be allowed to furnish services on a locum tenens basis at a location other than the physician assistant-certified's primary place of practice. A locum tenens utilization plan may be approved by a single board member."

Section 12. Section 37-20-302, MCA, is amended to read:

"37-20-302. Utilization plan approval fee -- renewal of approval license -- renewal fee. (1) ~~Every--physician,--office,--firm,--or--professional--service--corporation--proposing--to--employ--a--physician--assistant-certified--shall--pay--to--the--board--a~~ A utilization plan approval fee must be paid in an amount set by the board. Payment must be made when the utilization plan is submitted to the board and is not refundable.

(2) ~~Every--physician,--office,--firm,--or--professional--service--corporation--proposing--to---employ---a---physician--assistant-certified-on-a-locum-tenens-basis-shall-pay-to-the--board--a--locum-tenens-utilization-plan-fee-in-an-amount-set--by-the-board~~ A locum tenens utilization plan approval fee must be paid in an amount set by the board.

(3) A ~~certificate~~ license issued under this part must be renewed annually, on a date set by the board.

(4) A ~~certificate~~ license renewal fee set by the board must be paid at the time the ~~certificate~~ license is renewed.

(5) The department shall mail a renewal notice no later than 60 days prior to the renewal date set by the board under subsection (3). A certified letter addressed to the delinquent ~~certificate---holder's~~ licensee's last-known address as it appears on the records of the department constitutes notice of intent to revoke the ~~certificate~~ license.

(6) If the annual renewal fee is not paid on or before the renewal date set by the board under subsection (3), the board may revoke the ~~certificate~~ license after giving 30 days' notice to the ~~certificate--holder~~ licensee. A ~~certificate~~ license may not be revoked for nonpayment of a renewal fee if the ~~certificate--holder~~ licensee pays the annual renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.

(7) Fees received by the department must be deposited

LC 0195/01

in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6)."

Section 13. Section 37-20-402, MCA, is amended to read:

"37-20-402. Criteria for ~~approval--of~~ licensing a physician assistant-certified. A person may not be ~~approved~~ licensed as a physician assistant-certified in this state unless ~~he~~ the person:

(1) is of good moral character;

(2) is a graduate of a physician assistant training program approved by the American medical association's committee on allied health education and accreditation;

(3) has taken and successfully passed an examination recognized by the national commission on the certification of physician assistants;

(4) holds a current certificate from the national commission on the certification of physician assistants; and

(5) has submitted to the board detailed information on ~~his~~ the person's history, education, and experience."

Section 14. Section 37-20-404, MCA, is amended to read:

"37-20-404. Prescribing and dispensing authority -- discretion of supervising physician on limitation of authority. (1) A physician assistant-certified may prescribe, dispense, and administer drugs to the extent authorized by the board by rule, by the utilization plan, or both. The prescribing, dispensing, and administration of

drugs are also subject to the authority of the supervising physician, and the supervising physician ~~in-his-discretion~~ may impose additional limitations on the prescribing and dispensing authority granted by the board.

(2) All dispensing activities allowed by this section must comply with 37-2-104 and with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(3) The prescribing and dispensing authority granted a physician assistant-certified may include the following:

(a) Prescribing, dispensing, and administration of Schedule III drugs listed in 50-32-226, Schedule IV drugs listed in 50-32-229, and Schedule V drugs listed in 50-32-232, is authorized.

(b) Prescribing, dispensing, and administration of Schedule II drugs listed in 50-32-224 may be authorized for limited periods not to exceed ~~48~~ 72 hours.

(c) Records on the dispensing and administration of scheduled drugs must be kept.

(d) A physician assistant-certified shall maintain registration with the federal drug enforcement administration.

~~(e)--Drugs--dispensed-by-a-physician-assistant-certified must-be-prepackaged-by-a-licensed--pharmacist,--except--that samples--provided-by-a-pharmaceutical-company-representative~~

may be dispensed.

(f) Prescriptions written by physician assistants-certified must comply with regulations relating to prescription requirements adopted by the board of pharmacy.

(g) The board shall adopt rules regarding the refilling of prescriptions written by physician assistants-certified."

Section 15. Section 37-20-405, MCA, is amended to read:

"37-20-405. Billing. A supervising physician, office, firm, or an institution, where services were delivered or other entity may bill for physician assistant-certified services."

NEW SECTION. **Section 16.** Repealer. Section 37-20-102, MCA, is repealed.

NEW SECTION. **Section 17.** Codification instruction. [Sections 8 and 10] are intended to be codified as an integral part of Title 37, chapter 20, and the provisions of Title 37, chapter 20, apply to [sections 8 and 10].

NEW SECTION. **Section 18.** Effective date. [This act] is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0089, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

The bill generally revises the laws administering the Board of Medical Examiners, amending sections related to physicians assistants, impaired professionals, unprofessional conduct, liability insurance and adds a licensed physician-certified member to the board.

ASSUMPTIONS:

1. The Board of Medical Examiners will have 6 board meetings per year, each lasting 2 days, and the cost per board member will be $1,400, based on current experience.
2. One additional member will be added to the board.
3. License fees will not have to be raised to cover the costs of an additional board member because current fees are providing adequate revenue to cover the increased cost.
4. The net impact will be a $1,400 per year decrease in the board's current cash balance.

FISCAL IMPACT:

	FY94			FY95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Expenditures:						
Personal Services	79,633	80,533	900	81,105	82,005	900
Operating Expenses	336,176	336,676	500	333,759	334,259	500
Equipment	0	0	0	0	0	0
TOTAL	415,809	417,209	1,400	414,864	416,264	1,400
Revenue: Fees	346,000	346,000	0	346,000	346,000	0
Net Impact:	(69,809)	(71,209)	(1,400)	(68,864)	(70,264)	(1,400)

Dave Lewis 1-11-93

DAVID LEWIS, BUDGET DIRECTOR DATE

Office of Budget and Program Planning

Judy Jacobson 1/12/93

JUDY JACOBSON, PRIMARY SPONSOR DATE

SB 89

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By Senator Dorothy Eck, Chair, on January 15, 1993, at 1:00 p.m.

ROLL CALL

Members Present:

Sen. Dorothy Eck, Chair (D)
Sen. Eve Franklin, Vice Chair (D)
Sen. Chris Christiaens (D)
Sen. Tom Hager (R)
Sen. Terry Klampe (D)
Sen. Kenneth Mesaros (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Council
Laura Turman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 89, SB 35
Executive Action: SB 35, SJ 4, SB 80

HEARING ON SB 89

Opening Statement by Sponsor:

Sen. Judy Jacobson, Senate District 36, Butte, said SB 89 is a request of the Depart of Commerce revising the laws for the Board of Medical Examiners. One of the changes to the bill is that a physician assistant will sit on the Board of Medical Examiners, and they will only vote on issues concerning physician assistants. Sen. Jacobson went over changes regarding appearing in front of the Board when a physician is applying for a license, the enforcement of the Board when a physician is called in, and regarding disciplinary action associated with physical and mental

Proponents' Testimony:

Dr. Peter Burleigh, President of the Board of Medical Examiners, said one third of the Board's meeting time is spent dealing with physician assistant matters, so to make time more useful, a physician's assistant subcommittee was formed. But, much time was spent going over the subcommittee's report, so they would like to have a physician assistant be an official Board member, who could only vote on physician assistant certified business items. Dr. Burleigh said there is a change to SB 89 regarding impaired physicians which changes "narcotic" to "addictive" because many impairing substances may not be narcotics. Also, the Board must be able to deal with mental and physical illnesses that debilitate physicians. One good thing about this law is that a physician's peers may suggest that they go through treatment or put him under a contract rather that waiting for the physician to make a mistake. Dr. Burleigh said the Board wants to have the authority to revoke a physician's license if a direct order of the Board is ignored or refused. Dr. Burleigh also suggested that to receive a temporary license, meeting with a member of the Board is not required. Meetings with the Board should take place only if there are questions about disciplinary problems in the past or malpractice suits.

Jim Reid, Physician Assistant and who presides over the Physician Assistant Advisory Committee to the Board of Medical Examiners, said the changes to SB 89 regarding physician assistants was developed by consensus of the Committee and the Board. SB 89 expands disciplinary action over physician assistants and their supervising physician because currently there is very little recourse for the Board if they find that a physician assistant or a supervising physician are in violation of existing rules or statutes. SB 89 also revokes the requirement that physician assistants practicing in a hospital setting carry professional liability insurance. This was a requirement for physician assistants as a criteria for approved practice or licensure. Hospitals already have credential requirements regarding liability insurance, and since this only applies to physician assistants working in a hospital setting, Mr. Reid feels this should be revoked. SB 89 authorizes the Board to issue temporary or permanent licenses for physician assistants. It revokes the part of the statute that the drugs distributed by the physician assistant be prepackaged by a pharmacist because it is time consuming and very difficult in rural areas where there may not be a pharmacist. If all dispensed drugs had to be prepackaged, a pharmacist would have to prepackage and deliver the drugs. SB 89 also clarifies the billing for physician assistant's services. Currently, physician assistants cannot directly bill patients and that is acceptable, but only the facility where services were delivered could bill. The changes in SB 89 make allowances for house calls or cases where the physician assistant is not directly employed by the facility where services were delivered.

Bonnie Tippy, representing Montana State Pharmaceutical

Association, said there was a technical problem with SB 89 in Section 14. She provided written testimony. (Exhibit #1)

Jerry Loendorf, representing the Montana Medical Association, said they support all amendments offered to SB 89, especially those amendments giving greater authority to the Board to deal with incompetent physicians. The reason for this is it effects the patients and incompetent physicians create claims, increasing the cost of liability, increasing the cost of health care and ultimately increasing health insurance premiums.

Randy Spear, Past President of the Montana Academy of Physician Assistants, said that SB 89 will lead to decreased unnecessary regulations and legislation and provide for a greater ability for physician assistants to provide care in rural areas.

Dr. Peter Burley said there was one area he wanted to bring to the Committee's attention which he left out of his previous testimony. Current law states that if a physician knows that another physician is impaired, he must report this to the Board, and thus the Board knows about the impaired physician. The language in SB 89 allows a physicians who knows of another physician who is impaired to report to the Montana Physician Assistance Program (MPAP), a group which will be regionalized with sub-groups all over the state and this will save costs. If there is a problem with an impaired physician, one of the sub-groups will report it directly to the MPAP instead of the Board. If the physician does not abide by his contract with the MPAP, he is reported to the Board of Medical Examiners.
They feel that this will result in a smooth running program.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Sen. Jacobson said on Page 15, Line 16 the words "scheduled drugs" should be replaced with "addictive substances" to include alcohol.

Sen. Towe asked about the "other entity" on Page 20 which may bill for physician assistant services. Chairman Eck said there is a lot of talk about eventually having a single billing entity.

Sen. Towe asked why it was necessary to spell out in statute who may bill for physician assistant services. Sen. Jacobson said it was necessary because a physician assistant can't bill.

Sen. Towe asked why they couldn't bill for their services. Sen. Jacobson said it was because physician assistants work under a supervising physician. Jim Reid said direct billing by physician

assistants is avoided because they are not independent practitioners. Regarding the business of medicine rather that the practice of medicine, for small rural communities, the 1989 statute stating who can bill is limiting. SB 89 broadens employment arrangements between physician assistants, counties, health care facilities to allow any of those to bill for services of a physician assistant.

Sen. Towe said he didn't understand the ramifications of the amendment. His understanding is that any other entity may bill for a physician assistant's services, through a law firm for example. Mr. Reid said that effectively, that was the case. He said that very often physician assistants are employed by nursing homes, counties, hospitals, or health care facilities.

Sen. Towe asked if physician assistants had any problem with repealing that section of SB 89 all together so that they could send out a bill any way they wanted. Jim Reid said there was some question among some carriers as to whether or not physician assistants' services should be reimbursed at all.

Sen. Towe asked Jerry Loendorf if he or the Medical Association or the doctors in Montana have problems with eliminating the billing provision in SB 89 all together, does it serve any purpose. Mr. Loendorf said the useful purpose is if insurers are concerned and someone else is billing, it helps in getting paid.

Sen. Towe asked if that could be done without the statute. Jim Reid said that the statute was helpful.

Sen. Towe asked Bonnie Tippy if she could explain her concerns with SB 89. Ms. Tippy said the problem is with the part of the statute against physician assistants dispensing drugs. The physician may dispense drugs if a community pharmacy is not within ten miles. The office of the physician assistant is not defined, it does not say that the physician assistant's office is a satellite office of that medical doctor. Ms. Tippy said the language she suggests adding certified physician assistant to the part of the Montana Code book (37-2-101) which defines medical practitioner. If the Committee doesn't want to do this, then she suggests that language is added to SB 89 saying that the physician assistant's office is an extension to the medical doctor's office for the purpose of dispensing drugs.

Sen. Towe asked if the sponsor had any objections to this. Jim Reid said that it was fine to modify the definition of medical practitioner. Bonnie Tippy said it was really a technical matter.

Sen. Klampe said that if the Committee accepted the first option, were there other ramifications of being a medical practitioner that the Committee was not aware of.

Sen. Franklin said the Committee wasn't in a position to evaluate

the potentials.

Jerry Loendorf said the term "medical practitioner" is used strangely in the Community Pharmacy Act where, in almost every other part of the code, the term "health care provider" is used as the definition when a number of care providers are lumped together.

Sen. Towe asked what a "locum tenens utilization plan" is. Sen. Jacobson said a physician hires a locum tenen physician to cover the practice while he is out of the state. A utilization plan must be filed with the Board of Medical Examiners if they are going to do practice in Montana without a license.

Dr. Peter Burleigh said the utilization plan applies only to physician assistants.

Sen. Towe asked Dr. Burleigh about making willful disobedience of an order of the Board unprofessional conduct. He said the Board could get carried away. For instance, ordering the doctor to attend a meeting of the Governor, and if the doctor doesn't, it's unprofessional conduct. Dr. Burleigh said the Board acts in a reasonable manner, and all cases of misconduct are entitled to a hearing. It is the concern that some situations are timely, regarding a urine sample to detect use of a narcotic, for example.

Sen. Towe asked Dr. Burleigh if it would be cleaner to add language to SB 89 specifying an order of the Board to include the "physician's fitness or ability to practice medicine" to limit the Board's ruling of unprofessional conduct. Sen. Towe said he was concerned about the language making the violation of any order of the Board to be professional misconduct. Sen. Towe asked if a physician failed to submit a license fee, and the Board issued an order to pay it, and the physician doesn't get around to paying the license fee, does that qualify as professional misconduct. Dr. Burleigh said failure to renew a license fee was grounds for revocation of the license.

Sen. Towe said he understood that to be true, but he didn't think that not paying a license fee should be grounds for professional misconduct. Dr. Burleigh said that this situation would not be grounds for professional misconduct. Dr. Burleigh said it was his understanding that Sen. Towe disliked the idea that every violation of the Board's orders be qualified as professional misconduct.

Sen. Towe said that was "exactly right."

Sen. Rye said he couldn't believe that professional misconduct for failing to pay a license fee has ever come up. Dr. Burleigh said it had never been professional misconduct, but some licenses have been revoked for failure to pay the fee.

Sen. Towe said the Committee was being asked to change the law so that it states that "unprofessional conduct" means "willful disobedience of an order of the Board". This is what worried him.

Chairman Eck asked Jim Reid if a physician assistant worked under the supervision of a physician, whether or not they were in the same location. Mr. Reid said that was correct.

Chairman Eck said billing might not be a problem if the supervising physician were in the same location as the assistant. She asked if physician assistants were allowed now to bill independently. Mr. Reid said physician assistants could bill directly in some settings. Under Medicare law, physician assistants may not bill independently for their services.

Chairman Eck asked Mr. Reid if a physician must do the billing for a physician assistant. Mr. Reid said "an entity" must do the billing, the hospital or the county that employs the physician assistant. To the best of his knowledge, no physician assistant is being reimbursed directly to his tax identification number.

Sen. Jacobson asked Patrician England to address the problems with billing. Patrician England, Executive Secretary and Attorney for the Board of Medical Examiners said there may be a misunderstanding regarding the Board's authority to order a physician to do anything. The Board has specific authority over a physician during an investigation to order a physician to undergo a complete mental and physical evaluation. After a physician has been found guilty of unprofessional conduct of any sort, the Board may revoke his license, put him on probation, suspend him, or it may take other necessary action, which may be that the physician go back to school or that he restrict his practice to a specific area. The Board should be able to order a mental and physical evaluation if there is reasonable suspicion that a physician is unsafe. That is what this language is about. The Board does not have the authority to order a physician to attend a conference, or to build a ramp onto the office, or to pay license fees.

Sen. Christiaens asked Patricia England about when the Board can order a urine sample. Ms. England said the Board has the authority to order a complete mental and physical evaluation, and there are lesser degrees of evaluations than complete evaluations, such as a urine sample or a blood sample. The Board only has the authority to order these evaluations if there is reason to suspect the physician is guilty of unprofessional conduct or is an unfit practitioner. It is like "probable cause".

Sen. Christiaens asked Patricia England to address the timeliness issue. Ms. England said that when the Board has reason to suspect that the physician is unfit to practice medicine, the Board will ask the physician to produce a urine sample, not order

one. If the physician refuses and the Board has other facts as evidence to support an evaluation, the Board will order a complete evaluation.

Sen. Towe asked Ms. England if it wouldn't be simpler and easier to add in language to specify "an order regarding evaluation or enforcement of discipline of a licensee" where "unprofessional conduct" is now. He said he is not convinced that the Board would not assume more authority than talked about here. Ms. England said improper orders of the Board may be challenged by the physician and overturned in a court of law, thus not enforced. She said she didn't see any problems with leaving the language the way it is now.

Sen. Towe asked Ms. England if she would rather not change the language. Ms. England said it is simpler legally and linguistically to leave the language where it is.

Sen. Towe asked if there were any medical doctors at the Hearing who were not members of the Board. Sen. Towe asked Jim Reid if not changing the language regarding "unprofessional conduct" bothered him. Mr. Reid said that because of his experience with the Board, he understood the rationale, reasoning and fairness of the Board. He has no problems with leaving the language as is.

Closing by Sponsor:

Sen. Jacobson said it was a good hearing, and if the Committee was going to extensively amend the SB 89, please let her or Bonnie Tippy know and consult them.

HEARING ON SB 35

Chairman Eck turned the chairmanship over to Sen. Eve Franklin.

Opening Statement by Sponsor:

Sen. Dorothy Eck, Senate District 40, Bozeman, presented SB 35 at the request of the Joint Interim Subcommittee on Children and Families. Sen. Eck said the Children's Trust Fund is a good program, and has never been adequately funded, and the Subcommittee considered making the Trust Fund the body in Montana responsible for prevention. During the last session, increasing the budget for the Trust Fund through a gambling tax failed. It has been recommended that the Children's Trust Fund be part of a coordinating council, and Sen. Eck suggested that the Committee table SB 35. But, Sen. Eck wanted the members of the Committee to hear testimony from individuals who support the Children's Trust Fund.

Proponents' Testimony:

ROLL CALL

SENATE COMMITTEE Public Health DATE 1-15-93

NAME	PRESENT	ABSENT	EXCUSED
CHRISTIAENS	✓		
HAGER	✓		
KLAMPE	✓		
MESAROS	✓		
RYE	✓		
TOWE	✓		
FRANKLIN	✓		
ECK	✓		

FC8

Attach to each day's minutes

SENATE HEALTH & WELFARE
EXHIBIT NO. 1
DATE 1-15-93
BILL NO. SB 89

TESTIMONY AND PROPOSED AMENDMENTS
SENATE BILL 89
SUBMITTED BY: THE MONTANA STATE PHARMACEUTICAL ASSOCIATION
JANUARY 15, 1993

This bill adds a physician-assistant-certified to the BMeX, to vote, like the dietitian member, only on issues affecting the licensure and regulation of his or her group of licensees. The bill makes some housekeeping changes for both physician and physician-assistant licensing. The concern is with a portion of this bill amending the 1989 law which allowed P.A.s some prescribing and dispensing authority. That code section, sec. 37-20-404, contains this provision which would be deleted by SB 89:

> Drugs dispensed by a physician assistant-certified must be pre-packaged by a licensed pharmacist, except that samples provided by a pharmaceutical company representative may be dispensed.

Other language in sec. 37-20-404 specifies that any P.A. dispensing is subject to the general law on physician dipsensing, sec, 37-2-104. That law prohibits an M.D. from dispensing, "directly or indirectly", except as may come under one of the exceptions: an emergency, lack of a community pharmacy within 10 miles, administration of a unit dose, "occasional" dispensing not in the usual course of business, or giving away samples. 37-2-104 (2), MCA. So, if an M.D. can abuse these exceptions to the point of economically injuring a pharmacy in a small town, a P.A. would be able to do so too, under this bill. A P.A. could not, by virtue of having to limit the dispensing to occasional incidents not in the normal course of business, replace a pharmacy.

The one problem is the definition of a community pharmacy in the dispensing law, at 37-2-101 (5):

> "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which the medical practitioner maintains an office for professional practice.

Is the P.A.'s office considered an office of the supervising M.D. for purposes of this definition? Imagine a P.A. in Ekalaka working under the supervision of an M.D. in Glendive. If there is a pharmacy in Ekalaka, is that a community pharmacy for purposes of the definition just quoted? Bear in mind that the definition of a "medical practitioner" does not include a P.A. The cleanest solution would be to amend them in there, at 37-2-101 (1): "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optomtetry, ~~or~~ a nursing specialty as described in 37-8-205 (5), or a physician assistant-certified functioning as described in 37-20-404 and in the licensed practice to administer or prescribe drugs." The next choice would be to insert a statement in the section now being amended, 37-20-404, to the effect that the P.A.'s office is considered an extension of the M.D's office for purposes of the definitions in 37-2-101.

DATE Jan. 15, 1993

SENATE COMMITTEE ON Public Health

BILLS BEING HEARD TODAY: SB 35, SB 89

Name	Representing	Bill No.	Check One: Support	Oppose
Peter L Burkiel	Board of Med Examiners		✓	
HARLEY WARNER	ASSOC. OF CHURCHES	SB 35	X	
Terrie Loundork	Mt. Med. Assn	SB9	✓	
Jim Reid	PIA Mid-Coast to Border	SB9	✓	
Judy Wright	DHES			
Mindy Bill no	Board of Med Ex		✓	
Gus Cingolos MD	Board Med Exa		✓	
Randy Spear	MAPA	SB9	✓	
Barb Booher	Mt. Nurses Assoc.			
[illegible]	Board of Med Exam		✓	
Lyllian La Croix	Board of Med Exam		✓	
Paulette Kohman	MH Coal Mat Ch Hlth	SB35	—	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

Closing by Sponsor:

Rep. Hansen said that the Board of Sanitarians has the authority to bring in an individual for an interview, but that the oral examination in question should have never been put in the code.

EXECUTIVE ACTION ON HB 28

Motion/Vote:

Sen. Klampe moved that HB 28 be CONCURRED IN. The motion carried unanimously. Sen. Klampe will carry the bill on the Senate Floor.

EXECUTIVE ACTION ON SB 152

Motion/Vote:

Sen. Christiaens moved that SB 152 DO PASS. The motion carried unanimously. Sen. Franklin will carry SB 152 on the Senate Floor.

EXECUTIVE ACTION ON SB 89

Motion:

Sen. Towe moved the amendments to SB 89.

Discussion:

Sen. Towe went over the amendments. (Exhibit #2)

Vote:

The motion carried unanimously.

Motion:

Sen. Towe moved that SB 89 DO PASS as amended.

Discussion:

Sen. Klampe asked for clarification regarding the 10-mile rule of pharmacists for distributing drugs.

Sen. Franklin said Bonnie Tippy dropped her opposition to the current language regarding that issue. Sen. Towe said Ms. Tippy

agreed with him on this issue.

Susan Fox went over the two options discusses in the Committee hearing of SB 89. Sen. Klampe asked about an amendment choosing the second of the two options.

Substitute Motion:

Sen. Christiaens moved that SB 89 pass for the day.

Discussion:

Sen. Christiaens said the substitute motion would allow the members of the Committee to clarify the amendments offered regarding the dispensing of drugs by a pharmacist.

Vote:

Motion carried unanimously.

ADJOURNMENT

Adjournment: Chairman Eck adjourned the hearing.

SENATOR DOROTHY ECK, Chair

LAURA TURMAN, Secretary

DE/LT

ROLL CALL

SENATE COMMITTEE Public Health DATE 1-20-93

NAME	PRESENT	ABSENT	EXCUSED
CHRISTIAENS	✓		
HAGER	✓		
KLAMPE	✓		
MESAROS	✓		
RYE	✓		
TOWE	✓		
FRANKLIN	✓		
ECK	✓		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

January 26, 1993

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration Senate Bill No. 89 (first reading copy -- white), respectfully report that Senate Bill No. 89 be amended as follows and as so amended do pass.

Signed: Dorothy Eck
Senator Dorothy Eck, Chair

That such amendments read:

1. Page 7, line 8.
Following: "board"
Insert: "regarding evaluation or enforcement of discipline of a licensee"

2. Page 15, line 16.
Strike: "scheduled drugs"
Insert: "addictive substances"

-END-

SENATE HEALTH & WELFARE
EXHIBIT NO. #2
DATE 1-20-93
BILL NO. SB 89

Amendments to Senate Bill No. 89
First Reading Copy

Requested by Sen. Towe
For the Committee on Public Health, Welfare, and Safety

Prepared by Susan B. Fox
January 19, 1993

1. Page 7, line 8.
Following: "board"
Insert: "regarding evaluation or enforcement of discipline of a licensee"

2. Page 15, line 16.
Strike: "scheduled drugs"
Insert: "addictive substances"

basis is extremely important and should be continued.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. BOHLINGER asked **Sen. Eck** why chemically dependent youth and domestic violence issues were struck from the bill under the area of knowledge and experience criteria. **SEN. ECK** said the list of stricken language was attached to the Youth Services Advisory Council which deals with juvenile problems. A number of those issues will be discussed by the Family Services Advisory Council as well. She had no objection to adding any of the stricken language referred to, back into the bill.

CHAIRMAN BOHARSKI asked **Mr. Kirstein** why the legislation states how many members are on the local council but not on the state council. **Mr. Kerstein** said the number of members on the state council is shown on page 5 of the bill.

CHAIRMAN BOHARSKI asked **Joan-Nell Mcfadden** how many members are currently on the State Youth Services Council. **Ms. Mcfadden** said there are twelve members on the state council. There is a limit of nineteen members. **CHAIRMAN BOHARSKI** said he was concerned about expanding the number of people on the council because it would cost more money. The fiscal note states there is no fiscal impact but if more people are added it will cost more.

Closing by Sponsor:

SEN. ECK said the members of the state council will include county officials and there will be no compensation for those officials. There is no fiscal impact because the membership of the council will be about the same as it is presently. The councils serve a good purpose.

HEARING ON SB 89

Opening Statement by Sponsor:

SEN. JUDY JACOBSON, Senate District 36, Butte, said SB 89 generally revises the laws administering the Montana State Board of Medical Examiners. The bill adds a licensed physician assistant to the board. The physician assistants and Board of Medical Examiners feel this will be a positive move for them. The physician assistants would only vote on the issues that pertained to them. The bill prohibits practice as a physician assistant prior to licensure, and revokes the requirement that drugs dispensed by a physician assistant be prepackaged by a

drugs dispensed by a physician assistant be prepackaged by a licensed pharmacist which has been found to be expensive and cumbersome. The bill also addresses physician impairment. **EXHIBITS 1** and **2.**

Proponents' Testimony:

Esther Larson, Licensed Physician, Board of Medical Examiners, said SB 89 would make the statutes more workable, increase efficiency, increase public care and protection, and increase compliance with the statutes. At an international conference on treating the handicapped physician, statistics presented by various groups indicated addiction treatment for physicians is more successful than for the general public. There is a good recovery rate and a very low relapse rate.

Jim Reid, Physician Assistant, Chairman, Physicians' Advisory Committee, Board of Medical Examiners, said the language and terminology of the bill was unanimously approved by the Board of Medical Examiners. The bill expands the board's disciplinary authority. The bill also replaces the term certificate with license. This does not establish a new licensing category, and therefore, is not subject to sunrise review. Two categories of licensing, permanent and temporary, are provided for in the bill. This change will allow the board to bring physician assistants into the state under a temporary license until all criteria are met for permanent licensure.

Randy Spear, Montana Academy of Physician Assistants, said SB 89 streamlines the regulatory process. He asked the committee to support SB 89. **Exhibit 3.**

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. SAYLES asked **Randy Spear** how many physician assistants are in Montana. **Mr. Spear** replied at the present time there are approximately sixty physician assistants in Montana. **Rep. Sayles** asked **Mr. Spear** if physician assistants are equally distributed in rural and urban areas. **Mr. Spear** said seventy percent of physician assistants are in the rural areas and seventy percent of physicians are in the urban areas.

REP. SQUIRES asked **Pat England, Board of Medical Examiners,** what priority the board has given the part of the bill that addresses impaired physicians. **Ms. England** said the Professional Assistance Program that deals with impaired physicians and dentists has been in place since 1985 for physicians and 1989 for dentists. The program has been very effective. Current statutes require that any licensed physician shall, and any other person may, report directly to the Board of Medical Examiners any

evidence that a physician may be impaired. SB 89 would allow the report to be made directly to the Professional Assistance Program. If the physician fails to cooperate with the recommendation for evaluation and treatment, a report will be submitted to the Board of Examiners. The purpose is to place a psychological barrier between the board and the program which will enhance voluntary participation in the program.

REP. SIMON asked **Mr. Spear** how much schooling is needed to become a physician assistant, and if a bachelor degree is required. **Mr. Spear** said it takes two years. There are baccalaureate, certificate and masters programs. A bachelor degree is not required. **REP. SIMON** asked **Mr. Spear** if a high school graduate could become a physician assistant in two years. **Mr. Spear** said a prerequisite is prior health care experience. The majority of people that apply for the programs are nurses and respiratory therapists.

CHAIRMAN BOHARSKI asked **Mr. Reid** why "or other entity" was added under the billing section of the bill, and why the change was made revoking the requirement that drugs dispensed by a physician assistant be prepackaged by a licensed pharmacist. **Mr. Reid** said the statute created in 1981 and amended in 1989 provided that a health care facility or supervising physician may bill for physician assistant services. At the present time, there are physician assistants who are employed by counties and own the health care facility. There are also physician assistants who are employed by private health care organizations, physicians, and hospitals. The existing language as amended in 1989, was too limiting. For instance, until recently, Medicaid didn't issue physician assistant provider numbers. The numbers were issued to the physician. If a physician assistant worked in a satellite clinic; was the sole health provider in a county, and the supervising physician was in another community, with no employment relationship between the two, Medicaid paid to the tax identification number of the physician. This became a problem because the physician had no financial tie to the physician assistant's practice. The change will allow the physician assistant to bill directly.

Mr. Reid said when the concept of physician assistants prescribing pharmaceuticals was introduced in 1989, it was felt it would be appropriate to protect the pharmacists' interests and to ensure their involvement in the dispensing of medications prescribed by physician assistants. Since that time it has become obvious to the physician assistants and the Board of Pharmacy, that it is more of a burden on pharmacists than a protection, to require prepackaging of all medications dispensed by physician assistants. The pharmacists also found they were put in a position of packaging all medication, but did not have the opportunity to counsel the patient when dispensing occurred. As a result they didn't feel they were able to provide a full service to the patient and preferred to counsel the dispensing provider. The Board of Pharmacy concurs.

CHAIRMAN BOHARSKI asked **Mr. Reid** if a physician assistant can prescribe any medication a physician can. **Mr. Reid** said with one exception; that being thrombolitics, which is the drug category of TPA, and emanates streptokinase used in acute myocardial infarction.

Closing by Sponsor:

SEN. JACOBSON said the role of physician assistants is changing, particularly in the rural states. There has also been changes in the Montana Professional Assistance Program. It used to be very difficult for a physician to report a colleague whom they felt had a drug problem, because the only recourse at that point was to take their livelihood away from them. The program has made physicians more comfortable in reporting their colleagues, and has made physicians with a problem more comfortable in seeking help. **SEN. JACOBSON** asked the committee to support SB 89.

HOUSE OF REPRESENTATIVES

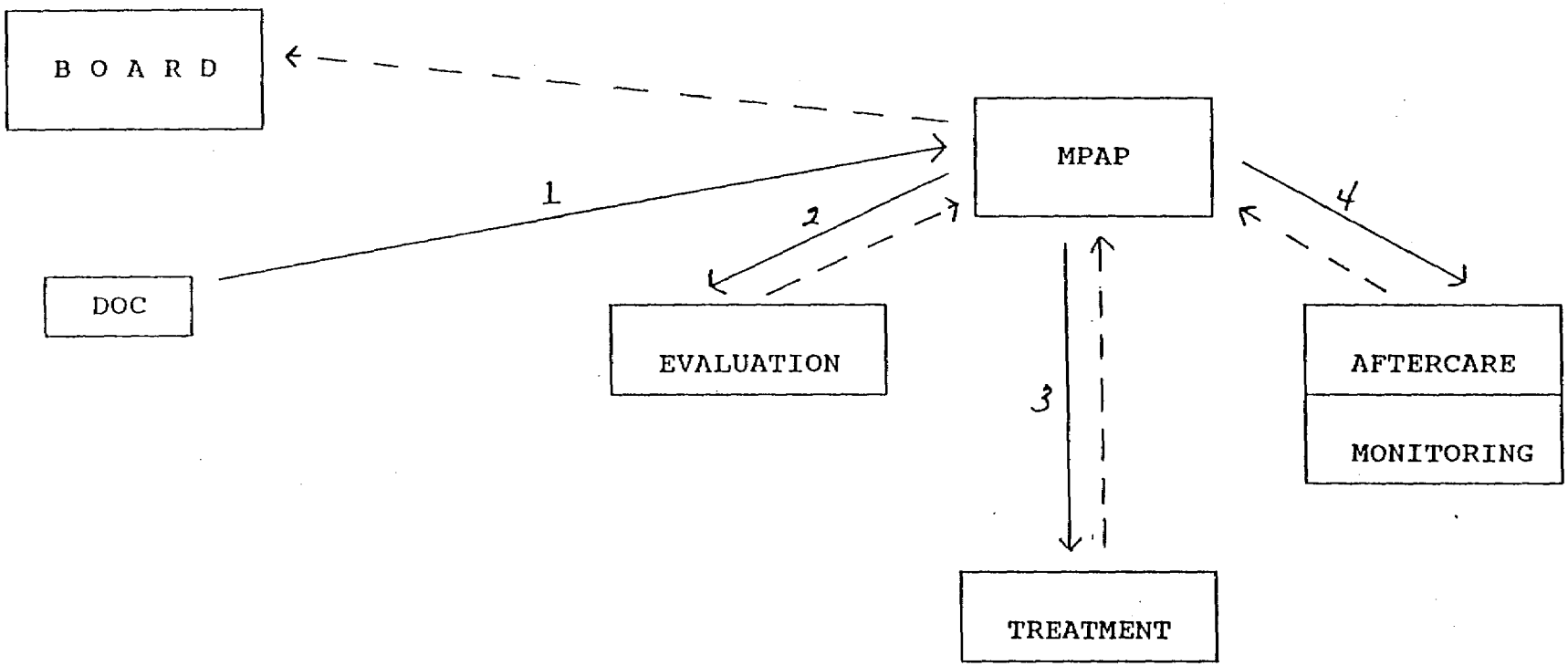
HUMAN SERVICES AND AGING COMMITTEE

ROLL CALL DATE 2-8-93

NAME	PRESENT	ABSENT	EXCUSED
REP. BILL BOHARSKI, CHAIRMAN	✓		
REP. BRUCE SIMON, VICE CHAIRMAN	✓		
REP. STELLA JEAN HANSEN, V. CHAIR	✓		
REP. BEVERLY BARNHART	✓		
REP. ELLEN BERGMAN	✓		
REP. JOHN BOHLINGER	✓		
REP. TIM DOWELL	✓		
REP. DUANE GRIMES	✓		
REP. BRAD MOLNAR	✓		
REP. TOM NELSON	✓		
REP. SHEILA RICE	✓		
REP. ANGELA RUSSELL			✓
REP. TIM SAYLES	✓		
REP. LIZ SMITH	✓		
REP. CAROLYN SQUIRES	✓		
REP. BILL STRIZICH	✓		

EXHIBIT 1
DATE 2-8-93
SB 89

REPORT TO MPAP -- NON-COMPLIANCE



———> = report
- - -> = report back

Fig. 7

EXHIBIT 1
DATE 2-8-93
SB 89

EXHIBIT 3
DATE 2-8-93
SB 89

MPAP is a non-profit organization. Financial support of the program is provided by a special assessment on Medical and Dental license fees. MPAP operates in affiliation with the Montana Board of Medical Examiners, the Montana Board of Dentistry, Montana Medical Association and Montana Dental Association. MPAP wants to especially recognize the financial and in-kind service support received from the Montana Medical Association and the Montana Dental Association.

Our program has an ongoing commitment to provide educational programs and workshops to promote personal and professional wellness for all Montana Physicians, Dentists and their families. Donations by individuals, clinics, hospitals, and other entities are always welcome and encouraged to help promote educational activities of the program. Please write or call for further information.

MONTANA PROFESSIONAL ASSISTANCE PROGRAM
2021 Eleventh Avenue, Suite 19
Helena, Montana 59601
406-443-7052

Montana Professional Assistance Program
2021 Eleventh Avenue, Suite 19
Helena, MT 59601

BULK RATE
U.S. POSTAGE
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Permit No. 221

MONTANA PROFESSIONAL ASSISTANCE PROGRAM

WHEN YOU NEED A HELPING HAND

CONFIDENTIAL, CARING HELP
FOR PHYSICIANS AND DENTISTS
(406) 443-7052

YOU MAY NEED OUR HELP

"Help me, I'm in pain!" As physicians and dentists, we frequently hear this cry from our patients in our offices or in the hospital. Who hears our cry for help? On occasion, physicians, dentists and their families can suffer pain and be in need of help.

As professional healers, we continue to push our physical and mental capacities beyond our limits. We often work in a state of sustained stress. Despite our professional training, or perhaps because of it, we are prone to certain "occupational hazards" of physical and emotional stress, long hours, irregular sleep, and constant fatigue. We may then become apt candidates for drug and/or alcohol dependency, depression or other forms of impairment that can effect our practice and our families.

WHY PROFESSIONALS NEED HELP

Because of professional pride, most of us are reluctant to admit that we need help or that we are experiencing difficulties in coping with our practices as the insidious disease of addiction and/or psychological impairment become obvious to others. In effect, we ignore our own physical and emotional needs. Most of us don't have to look too far to find one or more of our colleagues, or perhaps ourselves, who have a significant chance of becoming, or are in fact impaired.

Family members, significant others, office staff, and/or hospital administrators become confused about how to deal with the situation; this confusion all too often sets up a conspiracy of silence, threatening not only the depressed or chemically dependent person's life but the lives of his or her patients.

WHEN DOES A PROFESSIONAL NEED HELP?

You may need our help if you can answer "yes" to any of the following questions:

1. Are you experiencing problems coping with patients or with the normal stress of a busy practice?
2. Do you become easily depressed, angry or abusive?
3. Do you drink more than a moderate amount or drink out of control when you do drink?
4. Do you self prescribe any mood altering drugs?
5. Are you experiencing any sexual problems — impotency or affairs?
6. Do you find yourself slowing down or over-tired?
7. Do you constantly place work ahead of personal and family needs?
8. Are you experiencing financial or legal problems, malpractice suit, divorce or DUI?

THERE IS HOPE!

MPAP Consists of a group of physicians and dentists who are concerned about the health and well-being of our colleagues. Participants in the program work with other professionals who have experienced problems similar to their own, and learn that there are others facing difficulties who can and do recover. The program offers information and assistance in:

1.	**Intervention**	Members of the program will go to the troubled professional and offer him/her appropriate treatment and a program of recovery.
2.	**Referral**	We refer to treatment programs known to be skilled in dealing with health professionals.
3.	**After Care**	MPAP offers follow-up and help for the professional and his/her family with professional groups and relapse prevention education and monitoring.
4.	**Drug Testing**	MPAP keeps records of random testing to help the practitioner verify his/her recovery.
5.	**Advocacy**	The program advocates for the participant with Licensing Boards, Insurance Companies, Hospital Committees and other governing agencies.

MPAP's purpose is to prevent a damaged career or professional reputation by giving timely, confidential assistance and to provide insight and aid in the recovery of personal, professional and family health.

Members of MPAP accept referrals from professionals, colleagues, families of professionals, hospitals, patients, local and state Professional Practice Associations and Licensing Boards.

IT'S UP TO YOU

If you feel that you or one of your colleagues needs help, please break the "conspiracy of silence" and call us. We can help confidentially. We know that you, personally, may not know what to do; but we do. We can help in the majority of the cases. Calls are answered by trained MPAP staff personnel during the usual working hours and by answering machine at other times; all calls will be returned by the next working day and are handled in strict confidence.

The number to remember is: (406) 443-7052

EXHIBIT 3
DATE 2-8-93
SB 89

FACT SHEET -- SENATE BILL NO. 89

INTRODUCED BY SENATOR JACOBSON

AN ACT GENERALLY REVISING THE LAWS ADMINISTERING THE MONTANA STATE BOARD OF MEDICAL EXAMINERS

Elements which pertain to Physician Assistants – Certified (PA–Cs) include:

* **Was drafted by the Board of Medical Examiners and the PA Advisory Committee with the Board's full consent.**

* **Adds a PA–C to the Board of Medical Examiners.** This proposal was introduced by the Board's attorney and approved unanimously.

* **Expands the Board's disciplinary authority over physician assistants and supervising physicians.** This gives the Board a broader choice of disciplinary options.

* **Revokes the liability insurance requirement for PA–Cs working in hospitals.** This requirement is not required of any other medical provider and is not integral to the Board's charge to protect the public. A mechanism exists at the hospital credentialling level to address this issue.

* **Replaces the term "certificate" with "license".** PA–Cs are currently regulated as licensed professionals and meet the criteria defining "license" in 2–4–102(5) MCA. The Office of the Legislative Auditor has reviewed the proposed language and has indicated that, as amendments to current licensing laws, the proposed language does not require Sunrise review. This is not an effort to secure independent practice.

* **Authorizes the Board to issue permanent licenses and temporary licenses.** This clarifies the Board's authority while facilitating the timely licensure of PAs seeking to practice in Montana.

* **Revokes the requirement that drugs dispensed by a PA be prepackaged by a licensed pharmacist.** Pharmacists have agreed this requirement is not necessary.

* **Clarifies billing authority for PA–C services.** Removes site specificity to allow billing authority regardless of where services were delivered.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Human Services COMMITTEE BILL NO. SB89

DATE 2-8-93 SPONSOR(S) Senator Jacobson

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jim Reid PA-C Bitterroot MT	Board of Med. Ex. PA Advisory Committee	X	
Randy Spear Worden MT	MT. Acad. of Phys Asst.	X	
Esther Larsen DO	Board of Medical Exam	X	
Penny Robbe	SRS	—	—

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Pharmacies should not have to deal with this at the risk of their license. **REP. SIMON** asked the committee not to pass HB 355.

REP. STELLA JEAN HANSEN said pharmacists could figure out a system that would work. Drug price information is readily available on their computers.

Vote: **HB 355 DO PASS.** Voice vote was taken. Motion **FAILED** 8 to 8.

EXECUTIVE ACTION ON HB 391

Motion/Vote: **REP. SQUIRES MOVED HB 391 BE TABLED.** Voice vote was taken. Motion **CARRIED** unanimously.

Vote: **HB 391 BE TABLED.**

EXECUTIVE ACTION ON SB 209

Motion: **REP. SIMON MOVED SB 209 BE CONCURRED IN.**

Motion/Vote: **REP. SIMON** moved to adopt the amendment to SB 209. **EXHIBIT 7.** Voice vote was taken. Motion **CARRIED** unanimously.

Motion/Vote: **REP. SIMON MOVED SB 209 BE CONCURRED IN AS AMENDED.** Voice vote was taken. Motion **CARRIED** unanimously.

VOTE: **SB 209 BE CONCURRED IN.**

EXECUTIVE ACTION ON SB 187

Motion: **REP. SHEILA RICE MOVED SB 187 BE CONCURRED IN.** Voice vote was taken. Motion **CARRIED** unanimously.

Vote: **SB 187 BE CONCURRED IN.**

EXECUTIVE ACTION ON SB 89

Motion: **REP. SQUIRES MOVED SB 89 BE CONCURRED IN.** Voice vote was taken. Motion **CARRIED** 15 to 1.

Vote: **SB 89 BE CONCURRED IN.**

EXECUTIVE ACTION ON HB 315

Motion: **REP. SIMON MOVED DO PASS HB 315.**

Discussion: **REP. SIMON** said HB 315 is a way to make affordable health care available to people in Montana. **REP. SIMON** asked the committee to support HB 315.

Motion: **REP. DOWELL** moved to adopt the amendment to HB 315.

Discussion: **REP. DOWELL** said he supports the amendment because

HOUSE OF REPRESENTATIVES

HUMAN SERVICES AND AGING COMMITTEE

ROLL CALL DATE 2-10-93

NAME	PRESENT	ABSENT	EXCUSED
REP. BILL BOHARSKI, CHAIRMAN	✓		
REP. BRUCE SIMON, VICE CHAIRMAN	✓		
REP. STELLA JEAN HANSEN,V. CHAIR	✓		
REP. BEVERLY BARNHART	✓	-	
REP. ELLEN BERGMAN	✓		
REP. JOHN BOHLINGER	✓		
REP. TIM DOWELL	✓		
REP. DUANE GRIMES	✓		
REP. BRAD MOLNAR	✓		
REP. TOM NELSON	✓		
REP. SHEILA RICE	✓		
REP. ANGELA RUSSELL			✓
REP. TIM SAYLES	✓		
REP. LIZ SMITH	✓		
REP. CAROLYN SQUIRES	✓		
REP. BILL STRIZICH			✓
			-

HOUSE STANDING COMMITTEE REPORT

February 11, 1993

Mr. Speaker: We, the committee on Human Services and Aging report that Senate Bill 89 (third reading copy -- blue) be concurred in .

Signed: Wm E Boharski

Bill Boharski, Chair

Carried by: Rep. Squires

Committee Vote:
Yes ___. No ___.

3410403C.Hss

GOVERNOR'S AMENDMENTS TO
SENATE BILL NO. 89
(REFERENCE COPY)
March 16, 1993

1. Page 7, line 7.
Following "disobedience of"
Insert: "(a)"
Following "rules"
Insert "adopted by the board;"
Following "or"
Insert "(b)"

-End-

Gov. Amendment
SB 89

SENATE BILL NO. 89

INTRODUCED BY JACOBSON

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS ADMINISTERING THE MONTANA STATE BOARD OF MEDICAL EXAMINERS; ADDING A LICENSED PHYSICIAN ASSISTANT-CERTIFIED MEMBER TO THE BOARD; ALLOWING THE IMPAIRED PROFESSIONALS PROGRAM TO ADDRESS THE NEEDS OF PHYSICIANS DERIVING FROM MENTAL OR CHRONIC PHYSICAL ILLNESS; MAKING THE REQUIREMENT FOR PERSONAL APPEARANCE BY A PHYSICIAN APPLICANT FOR LICENSURE DISCRETIONARY; AMENDING THE DEFINITION OF "UNPROFESSIONAL CONDUCT"; AMENDING THE OBLIGATION TO REPORT INCOMPETENCE OR UNPROFESSIONAL CONDUCT; REVOKING THE LIABILITY INSURANCE REQUIREMENT FOR PHYSICIAN ASSISTANTS-CERTIFIED WHO WORK IN HOSPITALS; AMENDING PHYSICIAN ASSISTANTS-CERTIFIED PRACTICE STATUTES TO IMPROVE CLARITY AND ORGANIZATION; PROHIBITING PRACTICE AS A PHYSICIAN ASSISTANT-CERTIFIED PRIOR TO LICENSURE; REPLACING THE TERM "CERTIFICATE" WITH "LICENSE" WITH RESPECT TO PHYSICIAN ASSISTANTS-CERTIFIED; ALLOWING THE BOARD TO ISSUE CERTAIN FORMS OF LICENSURE TO PHYSICIAN ASSISTANTS-CERTIFIED; REVOKING THE REQUIREMENT THAT DRUGS DISPENSED BY A PHYSICIAN ASSISTANT-CERTIFIED BE PREPACKAGED BY A LICENSED PHARMACIST; ALLOWING CERTAIN PERSONS AND ENTITIES TO BILL FOR PHYSICIAN ASSISTANT-CERTIFIED SERVICES; AMENDING SECTIONS 2-15-1841, 37-3-203, 37-3-305, 37-3-322, 37-3-323, 37-3-401, 37-20-104, 37-20-202, 37-20-301, 37-20-302, 37-20-402, 37-20-404, AND 37-20-405, MCA; REPEALING SECTION 37-20-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-1841, MCA, is amended to read:

"**2-15-1841. Board of medical examiners.** (1) There is a Montana state board of medical examiners.

(2) The board consists of ~~10~~ 11 members appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.

(3) The members are:

(a) five members having the degree of doctor of medicine;

(b) one member having the degree of doctor of osteopathy;

(c) one member who is a licensed podiatrist;

(d) one member who is a licensed nutritionist; and

(e) one member who is a licensed physician assistant-certified; and

~~(e)~~(f) two members of the general public who are not

REFERENCE BILL: INCLUDES GOVERNOR'S AMENDMENTS DATED 3-16-93

SB 0089/03

medical practitioners.

(4) The members having the degree of doctor of medicine may not be from the same county. Each member ~~shall~~ must be a citizen of the United States. Each member, except for public members, ~~shall~~ must have been licensed and ~~shall~~ must have practiced medicine or dietetics-nutrition in this state for at least 5 years and ~~shall~~ must have been a resident of this state for at least 5 years~~,--except-that-for--5--years--after October--1,--1987,-the-number-of-years-of-licensure-required for-the-nutritionist-member-is-no-greater-than-the-number-of years-this-act-has-been-in-effect~~.

(5) The member who is a licensed nutritionist may vote only on issues that affect the licensure and regulation of nutritionists.

(6) The member who is a licensed physician assistant-certified may vote only on issues that affect the licensure and regulation of physician assistants-certified.

~~(6)~~(7) Members shall serve staggered 4-year terms. A term commences on September 1 of each year of appointment. A member may, upon notice and hearing, be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

~~(7)~~(8) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 37-3-203, MCA, is amended to read:

"37-3-203. Powers and duties. The board may:

(1) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter; the rules ~~shall~~ must be fair, impartial, and nondiscriminatory;

(2) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(3) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

(4) establish a program to assist and rehabilitate licensed physicians who are found to be physically or mentally impaired by habitual intemperance or the excessive use of ~~narcotic~~ addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness;

(5) select an executive secretary to be hired by the department to:

(a) provide services to the board in connection with the board's duties under this chapter;

(b) assist in prosecution and matters of license discipline under this chapter; and

(c) administer the board's affairs; and

(6) fund additional staff, hired by the department, to

administer the provisions of this chapter, by increasing license fees as necessary."

Section 3. Section 37-3-305, MCA, is amended to read:

"37-3-305. Qualifications for licensure. (1) ~~No~~ A person may not be granted a physician's ~~certificate~~ license to practice medicine in this state unless ~~he~~ the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training ~~which~~ that is at least the equivalent of 1 year internship;

(d) has had a completed application file reviewed by a board member and, in the discretion of the board member, has made a personal appearance before the board ~~unless such appearance has been specifically waived by the board~~; and

(e) is able to communicate, in the opinion of the board, in the English language.

(2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(3) ~~No~~ A person may not be granted a temporary license to practice medicine in this state unless ~~he~~ the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training ~~which~~ that is at least the equivalent of 1 year internship;

(d) has made a personal appearance before at least one member of the board; and

(e) is able, in the opinion of the board, to communicate in the English language."

Section 4. Section 37-3-322, MCA, is amended to read:

"37-3-322. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this chapter;

(2) performing abortion contrary to law;

(3) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(4) employing abusive billing practices;

(5) directly or indirectly giving or receiving a fee, commission, rebate, or other compensation for professional services not actually rendered. This prohibition does not preclude the legal functioning of lawful professional partnerships, corporations, or associations.

(6) willful disobedience of:

(A) the rules ADOPTED BY THE BOARD; or

(B) an order of the board REGARDING EVALUATION OR ENFORCEMENT OF DISCIPLINE OF A LICENSEE;

(7) conviction of an offense involving moral turpitude or conviction of a felony involving moral turpitude, and the judgment of the conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(8) commission of an act of sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine;

(9) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(10) conviction or violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal

food and drug administration, and the judgment of conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(11) habitual intemperance or excessive use of ~~narcotic~~ addictive drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(12) conduct unbecoming a person licensed to practice medicine or detrimental to the best interests of the public as defined by rule of the board;

(13) conduct likely to deceive, defraud, or harm the public;

(14) making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment, or remedy prescribed by the licensee or at the licensee's direction in the treatment of a disease or other condition of the body or mind;

(15) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization;

(16) use of a false, fraudulent, or deceptive statement in any document connected with the practice of medicine;

(17) practicing medicine under a false or assumed name;

(18) testifying in court on a contingency basis;

(19) conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;

(20) aiding or abetting in the practice of medicine by a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(21) allowing another person or organization to use the licensee's license to practice medicine;

(22) malpractice or negligent practice;

(23) except as provided in this subsection, practicing medicine as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice medicine within this state; however, this does not prohibit:

(a) the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4;

(b) a single consultation with or a single treatment by a person ~~or--persons~~ licensed to practice medicine and surgery in another state or territory of the United States or foreign country; or

(c) practicing medicine as the partner, agent, or employee of or in joint venture with a hospital, medical assistance facility, or other licensed health care provider. However:

(i) the partnership, agency, employment, or joint venture must be evidenced by a written agreement containing language to the effect that the relationship created by the agreement may not affect the exercise of the physician's independent judgment in the practice of medicine;

(ii) the physician's independent judgment in the practice of medicine must in fact be unaffected by the relationship; and

(iii) the physician may not be required to refer any patient to a particular provider or supplier or take any other action the physician determines not to be in the patient's best interest.

(24) willfully or negligently violating the confidentiality between physician and patient, except as required by law;

(25) failing to report to the board any adverse judgment, settlement, or award arising from a medical liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(26) failing to transfer pertinent and necessary medical records to another physician when requested to do so by the subject patient or by the patient's legally designated representative;

(27) failing to furnish to the board or its

investigators or representatives information legally requested by the board;

(28) failing to cooperate with a lawful investigation conducted by the board;

(29) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by them;

(30) having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined in this section. A certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct.

(31) any other act, whether specifically enumerated or not, ~~which~~ that, in fact, constitutes unprofessional conduct."

Section 5. Section 37-3-323, MCA, is amended to read:

"37-3-323. Revocation or suspension of license -- probation -- fine -- disposition of fine. (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person having a license or certificate to practice medicine in this

state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured ~~his~~ a license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent, or has a condition ~~which~~ that impairs ~~his~~ the person's intellect or judgment to the extent that it incapacitates ~~him~~ the person for the safe performance of professional duties;

(b) has been guilty of unprofessional conduct;

(c) has practiced medicine ~~while his license was~~ with a suspended or revoked license;

(d) has had ~~his~~ a license to practice medicine suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated its terms.

(2) The investigation ~~shall~~ must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and scrutinize the hospital

records and reports of a licensee as part of the examination, and copies ~~of these shall~~ must be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the ~~person~~ person's ~~at his~~ last address of record with the department a specification of the charges ~~against him~~, together with a written notice of the time and place of the hearing on ~~such~~ the charges, advising ~~him~~ that ~~he~~ the person may be present ~~in person~~ and may be represented by counsel if ~~he so desires~~ the person wants to offer evidence and be heard in ~~his~~ the person's own defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.

(3) A person, including a member of the board, may file a written complaint with the department against a person having a license to practice medicine in this state charging ~~him~~ that person with the commission of any of the offenses set forth in 37-3-322 or with any of the offenses or conditions set forth in subsection (1) of this section, ~~which complaint shall~~. The complaint must set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person accused at ~~his~~ the person's last address of record with the department, together with a written citation of the time and place of the hearing on it.

(4) At the hearing, the board shall adopt a resolution finding ~~him~~ the accused guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 37-3-322 or subsection (1) of this section do not exist with respect to the person or if ~~he~~ the person is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 37-3-322 or in subsection (1) of this section do exist and the person is found guilty, the board shall:

(a) revoke ~~his~~ the person's license;

(b) suspend ~~his~~ the person's right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on the terms and conditions to be determined by the board;

(d) place ~~him~~ the person on probation;

(e) impose a fine, not to exceed $500 an incident; or

(f) take any other action in relation to disciplining ~~him~~ the person as the board in its discretion considers proper.

(5) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent action of the board with respect to it.

(6) On the expiration of the term of suspension, the

licensee ~~shall~~ must be reinstated by the board if ~~he~~ the suspended person furnishes the board with evidence that ~~he~~ the person is then of good moral character and conduct, and is restored to good health, and ~~that he~~ has not practiced medicine in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows ~~he~~ the person has practiced medicine in this state during the term of suspension, the board shall revoke the license, using the ~~at a hearing with~~ notice and the hearing procedure provided in subsection ~~(1)~~ (2) ~~of this section~~. The revocation is final and absolute.

(7) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent or seriously mentally ill or addicted to the use of ~~narcotics~~ scheduled drugs ADDICTIVE SUBSTANCES, ~~his~~ the person's license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until ~~he~~ the person is discharged as restored to reason or cured and ~~his~~ the person's professional competence has been proven to the satisfaction of the board.

(8) A fine imposed under this section must be deposited

in the general fund.

(9) The remedies and method of enforcement of this part, as provided for in this section, are concurrent and in addition to the other remedies provided in this part."

Section 6. Section 37-3-401, MCA, is amended to read:

"37-3-401. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society ~~thereof~~ of the association shall and any other person may report to the state board ~~of medical examiners~~ any information ~~such~~ that the physician, organization, association, society, or person has ~~which~~ that appears to show that a physician is:

(a) medically incompetent;

(b) mentally or physically unable to safely engage in the practice of medicine; or

(c) guilty of unprofessional conduct.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the program established by the board under 37-3-203(4), in lieu of reporting directly to

the board.

(b) The program personnel referred to in subsection (2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

(i) the licensee fails or refuses to comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;

(ii) the licensee fails or refuses to undergo a reasonable course of treatment that they recommend, including reasonable aftercare;

(iii) the licensee fails or refuses to satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare;

(iv) the licensee's condition creates a risk of harm to the licensee, a patient, or others; or

(v) they are in possession of information that appears to show that the licensee has or is otherwise engaged in unprofessional conduct.

~~(2)~~(3) This section applies to professional standards review organizations only to the extent that such the organizations are not prohibited from disclosing such information under federal law."

Section 7. Section 37-20-104, MCA, is amended to read:

"37-20-104. ~~Penalty----enforcement~~ Title and practice.

(1) ~~Any~~ A person who ~~employs a physician assistant-certified or holds himself~~ out to ~~be~~ the public that the person is a physician assistant-certified without the approval of the Montana state board of medical examiners is guilty of a misdemeanor and is punishable as provided in 46-18-212.

~~(2) In addition to seeking any criminal penalty available under this section, the board may, in the manner set out in subsection (3) and after notice and opportunity for hearing, discipline any supervising physician or physician assistant-certified who:~~

~~(a) acts in violation of this section;~~

~~(b) obtained the approval of the board by fraud;~~

~~(c) acts in a manner contrary to the terms of the utilization plan; or~~

~~(d) violates any of the applicable provisions of this chapter or rules of the board adopted thereunder.~~ Prior to being issued a license and receiving approval of a utilization plan, a physician assistant-certified may not engage in the practice of medicine in this state, even under the supervision of a licensed physician.

~~(3) If the board finds that the supervising physician or the physician assistant-certified has violated any provision of subsection (2), the board may:~~

~~(a) revoke his license or approval, as applicable;~~

~~(b) suspend his right to practice for a period not to~~

~~exceed-1-year;~~

~~(c)--suspend-its-judgment-of--revocation--on--terms--and conditions-determined-by-the-board;~~

~~(d)--place-him-on-probation;~~

~~(e)--impose---a--fine;--not--to--exceed--$500--for--each violation;-or~~

~~(f)--take-other-action-it-considers-proper;~~

~~(4)~~(3) The board may enforce the provisions of this section by the remedy of injunction."

NEW SECTION. **Section 8.** Disciplinary action. (1) The Montana state board of medical examiners may, after notice and opportunity for hearing, discipline a supervising physician or physician assistant-certified who:

(a) acts in violation of this section;

(b) obtains approval of the board by fraud;

(c) acts in a manner contrary to the terms of a utilization plan; or

(d) violates any of the applicable provisions of this chapter or rules of the board adopted under this chapter.

(2) If the board finds that the supervising physician or the physician assistant-certified has violated any provision specified in subsection (1), the board may:

(a) revoke the person's license or approval;

(b) suspend the person's right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on terms and conditions determined by the board;

(d) place the person on probation;

(e) impose a fine, not to exceed $500 for each violation; or

(f) take other action it considers proper.

Section 9. Section 37-20-202, MCA, is amended to read:

"37-20-202. Adoption of rules. The board of medical examiners shall adopt administrative rules to implement the provisions of this chapter that:

(1) address the issues of supervision and direction limitations and requirements;

(2) address the issue of protocols for interaction of medical personnel with differing responsibilities;

(3) specify that a physician may not utilize more than one physician assistant-certified unless he--can the physician is able to demonstrate to the board the ability to supervise more than one assistant adequately;

(4) address other considerations pertinent to the approval of physician assistant-certified utilization plans and locum tenens utilization plans, and the health care needs of the public;

(5) address physician assistant training in Montana; and

(6) set forth grounds for disciplinary action."

NEW SECTION. **Section 10.** Licensing of physician assistants-certified. The Montana state board of medical examiners may issue the following two forms of physician assistants-certified licenses under its seal:

(1) a permanent license, signed by the president and subject to annual renewal; and

(2) a temporary license, signed by any member of the board and subject to specifications and limitations imposed by the board.

Section 11. Section 37-20-301, MCA, is amended to read:

"37-20-301. Utilization plan required -- contents -- approval. (1) A physician, office, firm, state institution, or professional service corporation may not employ or make use of the services of a physician assistant-certified in the practice of medicine, as defined in 37-3-102, and a physician assistant-certified may not be employed or practice as a physician assistant-certified unless the physician assistant-certified:

(a) is supervised by a licensed physician;

(b) ~~has been approved~~ is licensed by the Montana state board of medical examiners; and

(c) has received board approval of a physician assistant-certified utilization plan.

(2) A physician assistant-certified utilization plan must set forth in detail the following information:

(a) the name and qualifications of the supervising physician, as provided in 37-20-101, and the name and ~~approval~~ license number of the physician assistant-certified;

(b) the nature and location of the physician's medical practice;

(c) the ~~duties to be delegated to~~ scope of practice of the physician assistant-certified and the ~~location in which those duties are to be performed~~ locations where the physician assistant-certified will practice;

(d) the name and qualifications of a second physician meeting the requirements of 37-20-101 to ~~serve in the place of the~~ act as an alternate supervising physician in the ~~event that the supervising physician is unable to supervise the physician assistant certified temporarily~~ absence of the primary supervising physician;

(e) necessary guidelines describing the intended availability of the supervising or alternate physician for consultation by the physician assistant-certified; and

(f) other information the board may consider necessary.

(3) The board shall approve the utilization plan if it finds that the ~~duties to be delegated to~~ practice of the physician assistant-certified are is:

(a) assigned by the supervising physician;

(b) within the scope of the training, knowledge,

experience, and practice of the supervisory physician; and

(c) within the scope of the training, knowledge, education, and experience of the physician assistant-certified.

(4) A supervising physician and a physician assistant-certified may submit a new or additional utilization plan to the board for approval without reestablishing the criteria set out in 37-20-402, as so long as the information requirements of subsection (2) have been met and the appropriate fee provided for in 37-20-302(1) has been paid.

(5) A utilization plan may provide that a physician assistant-certified be allowed to furnish services on a locum tenens basis at a location other than the physician assistant-certified's primary place of practice. A locum tenens utilization plan may be approved by a single board member."

Section 12. Section 37-20-302, MCA, is amended to read:

"37-20-302. Utilization plan approval fee -- renewal of approval license -- renewal fee. (1) ~~Every--physician,--office,--firm,--or--professional--service--corporation--proposing--to--employ--a--physician--assistant-certified--shall--pay--to--the--board--a~~ A utilization plan approval fee must be paid in an amount set by the board. Payment must be made when the utilization plan is submitted to the board and is not

refundable.

(2) ~~Every--physician,--office,--firm,--or--professional--service---corporation---proposing---to--employ--a--physician--assistant-certified-on-a-locum-tenens-basis-shall-pay-to-the--board-a-locum-tenens-utilization-plan-fee-in-an--amount--set--by--the--board~~ A locum tenens utilization plan approval fee must be paid in an amount set by the board.

(3) A ~~certificate~~ license issued under this part must be renewed annually, on a date set by the board.

(4) A ~~certificate~~ license renewal fee set by the board must be paid at the time the ~~certificate~~ license is renewed.

(5) The department shall mail a renewal notice no later than 60 days prior to the renewal date set by the board under subsection (3). A certified letter addressed to the delinquent ~~certificate---holder's~~ licensee's last-known address as it appears on the records of the department constitutes notice of intent to revoke the ~~certificate~~ license.

(6) If the annual renewal fee is not paid on or before the renewal date set by the board under subsection (3), the board may revoke the ~~certificate~~ license after giving 30 days' notice to the ~~certificate---holder~~ licensee. A ~~certificate~~ license may not be revoked for nonpayment of a renewal fee if the ~~certificate--holder~~ licensee pays the annual renewal fee plus a penalty prescribed by the board on

or before the date fixed for revocation.

(7) Fees received by the department must be deposited in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6)."

Section 13. Section 37-20-402, MCA, is amended to read:

"37-20-402. Criteria for approval--of licensing a physician assistant-certified. A person may not be approved licensed as a physician assistant-certified in this state unless he the person:

(1) is of good moral character;

(2) is a graduate of a physician assistant training program approved by the American medical association's committee on allied health education and accreditation;

(3) has taken and successfully passed an examination recognized by the national commission on the certification of physician assistants;

(4) holds a current certificate from the national commission on the certification of physician assistants; and

(5) has submitted to the board detailed information on his the person's history, education, and experience."

Section 14. Section 37-20-404, MCA, is amended to read:

"37-20-404. Prescribing and dispensing authority -- discretion of supervising physician on limitation of authority. (1) A physician assistant-certified may prescribe, dispense, and administer drugs to the extent

authorized by the board by rule, by the utilization plan, or both. The prescribing, dispensing, and administration of drugs are also subject to the authority of the supervising physician, and the supervising physician ~~in--his--discretion~~ may impose additional limitations on the prescribing and dispensing authority granted by the board.

(2) All dispensing activities allowed by this section must comply with 37-2-104 and with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(3) The prescribing and dispensing authority granted a physician assistant-certified may include the following:

(a) Prescribing, dispensing, and administration of Schedule III drugs listed in 50-32-226, Schedule IV drugs listed in 50-32-229, and Schedule V drugs listed in 50-32-232, is authorized.

(b) Prescribing, dispensing, and administration of Schedule II drugs listed in 50-32-224 may be authorized for limited periods not to exceed 48 72 hours.

(c) Records on the dispensing and administration of scheduled drugs must be kept.

(d) A physician assistant-certified shall maintain registration with the federal drug enforcement administration.

~~(e)--Drugs-dispensed-by-a-physician--assistant-certified~~

must--be--prepackaged--by-a-licensed-pharmacist,-except-that samples-provided-by-a-pharmaceutical-company--representative may-be-dispensed.

~~(f)~~(e) Prescriptions written by physician assistants-certified must comply with regulations relating to prescription requirements adopted by the board of pharmacy.

~~(g)~~(f) The board shall adopt rules regarding the refilling of prescriptions written by physician assistants-certified."

Section 15. Section 37-20-405, MCA, is amended to read:

"37-20-405. Billing. A supervising physician, office, firm, or--an institution, where-services-were-delivered or other entity may bill for physician assistant-certified services."

NEW SECTION. **Section 16. Repealer.** Section 37-20-102, MCA, is repealed.

NEW SECTION. **Section 17.** Codification instruction. [Sections 8 and 10] are intended to be codified as an integral part of Title 37, chapter 20, and the provisions of Title 37, chapter 20, apply to [sections 8 and 10].

NEW SECTION. **Section 18. Effective date.** [This act] is effective on passage and approval.

-End-